

**ORDINANCE # \_\_\_\_\_**  
**PROPOSED ORDINANCE #03-06**

**AN ORDINANCE AMENDING CHAPTER 18, TAXATION,  
OF THE CODE OF THE CITY OF WILLIAMSBURG, VIRGINIA,  
BY ADDING ARTICLE XI TO IMPOSE A CIGARETTE TAX**

BE IT ORDAINED by the City Council of the City of Williamsburg, Virginia that Chapter 18 of the Williamsburg Code is hereby amended and reordained by adding thereto Article XI. Cigarette Tax, as follows:

**ARTICLE XI**

**Section 18-400. Definitions**

The following words, terms and phrases, when used in this article shall have the meanings respectively ascribed to them by this section, except where the context clearly indicates a different meaning:

*Dealer* means every manufacturer, jobber, wholesale dealer or other person who supplies a seller with cigarettes.

*Director of Finance* means the City Director of Finance or his designee.

*Package* means every package, box, can or other container of any cigarettes, irrespective of the material from which such container is made, to which the Internal Revenue stamp of the United States government is required to be affixed by and under federal statutes and regulations, and in which retail sales of cigarettes are normally made or intended to be made.

*Purchaser* means every person to whom ownership of any cigarettes is transferred by a seller for any valuable consideration within the city.

*Sale* means every act or transaction, irrespective of the method or means employed, including the use of vending machines and other mechanical devices, whereby ownership of any cigarettes shall be transferred from the seller to any other person within the city for any valuable consideration. Tobacco products found in quantities of more than six cartons within the city shall be conclusively presumed for sale or use within the city.

*Seller* means every person who transfers ownership of any cigarettes, or in whose place of business ownership of any cigarettes is transferred or who engages in a sale for any valuable consideration within the city for any purpose other than resale.

*Stamp* means a small gummed piece of paper or decalcomania to be sold by the Director of Finance and to be affixed to every package of cigarettes sold at

retail in the city; also any insignia or symbols printed by a meter machine upon any such package under the authorization of the commissioner of revenue.

**Sec. 18-401 Rules and Regulations.**

The Director of Finance is authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to the method and means to be used in the cancellation of cigarette tax stamps and to any and all other matters pertaining to the administration and enforcement of this article.

**Sec. 18-402. Examinations by Director of Finance Authorized.**

The Director of Finance is authorized and empowered to examine books, records, invoices, papers and any and all cigarettes in and upon any premises where the cigarettes are placed, stored, sold, offered for sale or displayed for sale by a seller.

**Sec. 18-403 Unlawful Acts.**

**It shall be unlawful and a violation of this article for any person to:**

- (1) Perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article or of any part thereof; for any dealer or seller, with intent to violate any provision of this article, to fail or refuse to perform any of the duties imposed under this article or to fail or refuse to obey any lawful order which the commissioner of revenue may issue under this article; or
- (2) Sell any cigarettes upon which the tax imposed by this article has not been paid and upon which evidence of payment thereof is not shown on each package of cigarettes.

**Sec. 18-404. Presumption of Violation Against Seller.**

If more than six cartons of cigarettes are found in the possession of a seller without the proper stamps being affixed thereto or without authorized printed markings of a meter machine thereon and the seller shall be unable to submit evidence establishing that such cigarettes were received within the immediately preceding 48 hours and that the seller has not offered the cigarettes for sale, the presumption shall be that such cigarettes are being kept by such seller in violation of this article and shall subject the seller to the penalties provided in this article.

**Sec. 18-405. Levied; Amount.**

Beginning July 1 and at all times thereafter, until and unless otherwise changed by the city council, there is levied and imposed by the city, upon each and every

sale of cigarettes, a tax equivalent to twenty five cents (\$0.25) for each twenty (20) cigarettes or fractional number of twenty (20) cigarettes sold within the city. The amount of such tax shall be paid by the seller, if not previously paid, in the manner and at the time provided for in this article.

**Sec. 18-406. Additional Taxes.**

The tax levied and imposed by this article shall be in addition to all other taxes of every kind levied and imposed by any other ordinance or law.

**Sec. 18-407 Payment.**

The tax imposed by this article shall be paid by affixing or causing to be affixed a stamp, of the proper denominational or face value, to each package of cigarettes sold within the city, in the manner and at the time or times provided in this article. Every dealer and every seller in the city shall have the right to buy such stamps from the city Finance Department or other office designated by the Director of Finance and to affix the stamps to packages of cigarettes as provided in this article.

**Sec. 18-408. Duties of Dealers.**

Every local dealer in cigarettes shall purchase such stamps at the city Finance Department or other office designated by the Director of Finance as shall be necessary to pay the tax levied and imposed by this article and shall affix or cause to be affixed a stamp of the monetary value prescribed by this article to each package of cigarettes prior to delivery or furnishing of such cigarettes to any seller; provided, however, that nothing in this section shall preclude any dealer from using a stamp meter machine in lieu of gummed stamps to effectuate the provisions of this article.

**Sec. 18-409. Recordkeeping.**

Every local dealer and seller shall maintain and keep for a period of two years such record of cigarettes sold and delivered by him or her as may be required by the Director of Finance and shall make all such records available for examination by the Director of Finance, upon demand, at any and all reasonable times.

**Sec. 18-410. Visibility of Stamps.**

Cigarette tax stamps or the printed markings of a meter machine shall be placed upon each package of cigarettes in such manner as to be readily visible to the purchaser.

**Sec.18-411. Examination of Packages by Seller; Correction of Unstamped or Incorrectly Stamped Packages.**

- (a) Every seller of cigarettes shall examine such package of cigarettes prior to exposing the package for sale, for the purpose of ascertaining whether such package has the proper stamps affixed thereto or imprinted thereon, as provided by this article.
- (b) If, upon such examination, unstamped or improperly stamped packages of cigarettes are discovered, the seller, where such cigarettes were obtained from a dealer, shall immediately notify such dealer. Upon such notification, such dealer shall forthwith either affix to or imprint upon such unstamped or improperly stamped packages the proper amount of stamps or shall replace such packages with others to which stamps have been properly fixed or imprinted thereon.

**Sec. 18-412. Correction of Unstamped or Improperly Stamped Packages by Seller.**

Should a seller of cigarettes have in his or her possession any unstamped or improperly stamped cigarettes or should a seller obtain or acquire possession from any person, other than a dealer, any unstamped or improperly stamped cigarettes, such seller shall forthwith, before selling, offering or exposing such cigarettes for sale in the city, purchase and affix or cause to be affixed to such packages of cigarettes the proper stamps or the markings of a meter machine, covering the tax imposed by this article.

**Sec. 18-413. Duties of Dealers When Sellers Affix Stamps.**

If any seller of cigarettes shall elect to purchase and affix stamps or imprints of a meter machine before offering cigarettes for sale, any dealer delivering and furnishing cigarettes to any such seller shall not be required to purchase and affix the stamps or imprints to such cigarettes so sold or furnished. However, any such dealer shall, on the day following the day of such delivery and furnishing, file with the Director of Finance a copy of the delivery memorandum showing the name and address of such seller and the quantity and type of cigarettes so delivered and furnished.

**Sec. 18-414. Preparation and Sale of Stamps.**

For the purpose of making cigarette tax stamps available for use, the Director of Finance shall prescribe, and cause to be prepared and sold by the city Finance Department or other office, preprinted stamps and meter imprints of such stamps of such denominations and in such quantities as may be necessary for the payment of the taxes imposed by this article. Such meter imprints and stamps, shall be sold at a discount of four percent of the denominational or face value thereof to compensate the dealer or other purchaser thereof of the costs incurred in applying such meter imprints or stamps to cigarettes as required by this article.

**Sec. 18-415. New Design of Stamps.**

The Director of Finance may, from time to time, and as often as is deemed advisable, provide for the issuance and exclusive use of cigarette tax meter imprints and stamps of a new design and forbid the use of meter imprints and stamps of any other design.

**Sec. 18-416. Meter Machines.**

The Director of Finance is authorized to permit the payment in advance of the tax levied and imposed by this article by the method of placing imprints of stamps upon original packages by the use of meter machines in lieu of the method of paying such tax by the purchase and affixing of gummed stamps. The Director of Finance is authorized to prescribe and enforce the necessary regulations setting forth the method to be employed and the conditions to be observed in the use of such meter machines.

**Sec.18-417. Refunds for Unused Stamps and Imprints.**

- (a) Should any person, after acquiring from the city any cigarette tax stamps, cease to be engaged in a business necessitating the use of such stamps or should any such stamps become mutilated and unfit for use other than by cancellation, such person shall be entitled to a refund of the denominational or face amount of any such stamps so acquired and not used by him or her, less four percent of the denominational or face amount thereof, upon presenting such stamps to the Director of Finance with an affidavit showing to the Commissioner's satisfaction that the stamps were acquired by such person and have not in any manner been used and the reason for requesting the refund.
- (b) For any authorized meter machine, should any imprints of such machine already paid for not be used, such person shall, upon furnishing the Director of Finance with a similar affidavit, be entitled to a refund of the denominational or face amount thereof, less four percent of the denominational or face amount of such imprints of the machine not so used.
- (c) Any refunds for unused and mutilated stamps and for nonuse of imprints of such stamps by meter machines provided for under this section are authorized to be made on vouchers approved by the Director of Finance and, when made, the refunds shall be charged against the sums collected for the sale of such stamps and for the use of such imprints.

**Sec. 18-418. Seizure and Sale of Untaxed Cigarettes.**

- (a) Whenever the Director of Finance, shall discover cigarettes in quantities of more than six cartons which are subject to the tax imposed by this article and upon which the tax has not been paid or upon which stamps have not

been affixed or evidence of such tax is not shown thereon by the printed markings of an authorized meter machine, as in this article required, the Director of Finance is authorized and empowered to forthwith seize and confiscate such cigarettes, if:

- (1) They are in transit and are not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and of the consignee or purchaser and the brands and quantity of tobacco products so transported, or they are in transit and accompanied by a bill of lading or other document which is false or fraudulent, in whole or in part;
  - (2) They are in transit and are accompanied by a bill of lading or other document indicating:
    - a. A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid, unless the tax of the state or district of destination has been paid and the products bear the tax stamps of that state or district; or
    - b. A consignee or purchaser in the Commonwealth of Virginia but outside the city who does not possess a state sales and use tax certificate, a state retail tobacco license and, where applicable, both a business license and retail tobacco license issued by the local jurisdiction of destination; or
  - (3) They are not in transit and the tax has not been paid nor have approved arrangements for payment been made, provided that this subsection shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with the Director of Finance that those cigarettes are temporarily within the city and will be sent to consignees or purchasers outside the city in the normal course of business.
- (b) All cigarettes seized and confiscated according to subsection (a) of this section and all other property seized and confiscated, other than motor vehicles, used in the furtherance of any illegal evasion of the tax shall thereupon be deemed to be forfeited to the city and may be sold within a reasonable time thereafter, after proper notice of such seizure is given to the known holders of property interests in the cigarettes or other property. Such notice shall be given to known holders of property interests, if any, by certified mail at least 14 days before the date of sale. All monies collected under this section shall be paid to the city Department of Finance and treated as other taxes collected under this article. No credit from any

sale shall be allowed toward any tax or penalties owed. Such seizure and sale shall not be deemed to relieve any person from any fine provided for in section 18-420 for the violation of the provisions of this article.

- (c) Any person violating this article shall be required to pay a penalty of ten percent per month with interest of three-fourths of one percent per month on any tax found to be overdue and unpaid thereon. The penalty for fraud or evasion of the tax shall be 50 percent per month with interest of three-fourths of one percent per month upon the tax found to be overdue and unpaid.
- (d) Any counterfeit stamps or counterfeit impression devices found may also be seized and confiscated.
- (e) Any person aggrieved by such forfeiture and sale of any property seized may request an appeal of such actions directly to the Director of Finance, if such appeal is requested before the sale.

**Sec. 18-419. Seizure, Sealing and Sale of Certain Cigarette Vending Machines.**

- (a) Whenever the Director of Finance shall discover any coin-operated vending machine in which cigarettes are found, stored or possessed bearing a counterfeit or bogus stamp or impression or any unstamped cigarettes, or any cigarettes upon which the tax imposed by this article has not been paid, the Director of Finance is hereby authorized and empowered to forthwith seize and take possession of such vending machine as contraband property, which shall thereupon be deemed to be forfeited to the city. When any such vending machine is found containing such cigarettes, it shall be presumed that such cigarettes were intended for distribution, sale or use therefrom. In lieu of immediate seizure and confiscation, the Director of Finance may cause such vending machine to be sealed in order to prevent continued illegal sale or removal of any cigarettes. It shall be unlawful for any person to move or operate a vending machine so sealed by the Director of Finance, or to remove the seal therefrom. Such seal may be removed and the vending machine declared eligible for operation only by the Director of Finance, who may allow such vending machine to remain sealed until other civil and criminal penalties are imposed or waived. Nothing herein shall prevent the Director of Finance from seizing and confiscating a vending machine at any time after it is sealed.
- (b) Within a reasonable time after the seizure and confiscation, or sealing of a vending machine as provided in this section, the Director of Finance shall send notice thereof to any known address of such holder, and shall advise such holder of his right to submit to the

Director of Finance, at any time prior to a date specified in such notice, which shall not be less than ten (10) days from the date of mailing of the notice, evidence establishing that the cigarettes contained in such vending machine were not intended for distribution, sale or use, or that such holder was unaware that such cigarettes were contained in such vending machine. If such evidence is established to the satisfaction of the Director of Finance, then the vending machine shall be relieved from forfeiture and restored to such holder, or the evidence is submitted prior to the date specified in such notice, the Director of Finance may, at any time thereafter, sell such forfeited vending machine in the same manner as provided for the sale of cigarettes, as set forth in Section 23-118.

**Sec. 18-420. Penalties for Violation.**

- (a) Any person violating any of the provisions of this article shall be deemed guilty of a class 1 misdemeanor and such conviction and payment of fine shall not relieve any such person from the payment of any tax and penalty imposed by this article.
- (b) Any corporate, partnership or limited liability company officer, as defined in Code of Virginia, § 58.1-3906, or any other person required to collect, account for or pay over the cigarette tax imposed under this article, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a class 1 misdemeanor.
- (c) Each violation of or noncompliance with any of the provisions of this article shall constitute a separate offense and shall subject every person convicted thereof to the penalties prescribed in subsections (a) and (b) of this section.

This ordinance shall be effective July 1, 2003

ADOPTED: \_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor